

Wage Payment & Collection (WPC) Act Payroll Deductions & Wage Assignments

West Virginia Division of Labor
Wage & Hour Section

WPCA Fact Sheet 7 – §21-5-3 and §42CSR 5-9
(May 2020)

RULES RELATING TO PAYROLL WAGE DEDUCTIONS & ASSIGNMENTS

Every person, firm, or corporation doing business in this state shall settle with its employees at least twice every month with no more than nineteen days between settlements and pay them the wages due, less authorized deductions and authorized wage assignments, for their work or services. §21-5-3(a)

Wage Assignments

No assignment of, or order for, future wages shall be valid for a period exceeding one year from the date of assignment or order. An assignment of future wages shall be in writing and specify the total amount due and that three fourths of the employee's earnings or wages shall at all times be exempt from such assignment and the order shall be acknowledged before a notary public. §21-5-3(e)

Authorized Versus Unauthorized Deductions

Authorized payroll deductions are those deductions that are allowed by law, required by court order, or relate to employer-sponsored or provided fringe benefit plans in which the employee is a participant. §21-5-3(e) & §42CSR 5-9.4

A wage assignment is required for any payroll deduction that is not specifically addressed in §42CSR 5-9.4 as stated above relating to allowable deductions. Provided, however, an employer and employee may agree between themselves in writing as to deductions to be made from the payroll of the employee.

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Non-Return of Employer Provided Property

When all of the requirements of §21-5-4(f) (A-E) are met, an employer may withhold, deduct, or divert an employee's final wages to recover the replacement costs of non-returned employer provided property. Such withholdings do not require the use of a wage assignment form and the amount withheld is not limited to the standard 25% of net wages.

§21-5-4(f)(A-E)

(A) The employer provided property had been provided to the employee in the course of, and for use in, the employer's business;

(B) The employer provided property has a value in excess of \$100;

(C) The employee had signed a written agreement with the employer at the time of receiving the employer provided property, or signed and ratified an agreement if property had been provided prior to the effective date of this provision; and such agreement contained, at a minimum, the following information:

- (i) Specific itemization of the employer provided property, with a specified replacement cost;
- (ii) Clear statement that such items are to be returned immediately upon discharge or resignation; and
- (iii) Clear statement, coupled with the employee's acknowledgement and agreement, that should the employee fail to timely return the specified items, the replacement cost of such items may be recovered by the employer from the employee's final wages;

(D) The employer shall notify the employee in writing at the time of discharge or resignation by personal service, or as soon thereafter as practicable by personal service or via certified mail with return receipt requested, as to the replacement cost of the items and make a demand for return of such employer provided property within a certain date, not to exceed ten business days of the notification; and

E) The employer shall relinquish the withheld, deducted or diverted wages to the employee if the employee returns the employer's property, equipment, supplies and uniforms in a condition suitable for the age and usage of the items within the deadline specified in paragraph (D) of this subsection: Provided, That uniforms returned to the employer within three years of their issuance shall be deemed acceptable in their current condition at the time of separation from employment for purposes of this section: Provided further, replacement tools are deemed to be the property of the employee and are not subject to the provisions of this section.

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RULES FOR WAGE ASSIGNMENTS

Terms and Conditions

In order to take a deduction from wages that is not authorized by §42CSR 5-9.4, the employer and employee must enter into a wage assignment agreement. In order for such an agreement to be considered valid, the employee must complete an “Assignment of Future Wages Form”. §21-5-3 & §42CSR 5-9

The terms and conditions of a wage assignment, including the limitation of withholding no more than 25% of the employee’s net (take home) earnings, shall also apply to the employee’s final wages. **see special rules for final wages of state employees.*

Rules for Wage Assignments:

- An Assignment of Future Wages Form must be signed by both the employer and employee.
- Wage assignments are valid for only one (1) year and must be renewed annually.
- The wage assignment form must state the total amount owed.
- Seventy-five percent (75%) of an employee’s net (take home) earnings are exempt from wage assignment, meaning wage assignment agreements are limited to a deduction of no more than 25% of the employee’s net (take home) earnings each payday. Based on the 25% limitation, the amount of the deduction may change from payday to payday depending upon the amount of the employee’s gross earnings and other payroll deductions.
- All assignments are honored in the order they’re authorized.

Wage Assignments for West Virginia State Employees

When a West Virginia state employee has been overpaid, the employee may voluntarily authorize a written assignment or order for future wages to repay the overpayment in an amount not to exceed “three-fourths” of his or her periodical earnings or wages.

Wage Garnishments Versus Wage Assignments

Wage assignments are not to be confused with wage garnishments. A wage assignment is merely an agreement between an employee and employer, while a wage garnishment is a result of a court order. If an employer has been served with a wage garnishment order requiring withholdings that exceed 25% of the employee’s net wages, the employer may not enter into an assignment of wages agreement, or continue honoring any existing wage assignment agreements, while the garnishment order is in effect. §42CSR 5-9.5